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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

CLIFFORD JAMES SCHUETT,

Plaintiff(s),

v.

UNITED STATES MARSHAL
SERVICE, et al.,

Defendant(s).

2:13-CV-1063 JCM (GWF)

ORDER

Presently before the court is *pro se* prisoner plaintiff Clifford James Schuett's motion for a temporary restraining order. (Doc. # 12).

According to Federal Rule of Civil Procedure 65, a court may issue a temporary restraining order when the moving party provides specific facts showing that immediate and irreparable injury, loss, or damage will result before the adverse party's opposition to a motion for preliminary injunction can be heard. Fed. R. Civ. P.65. "The purpose of a temporary restraining order is to preserve the status quo before a preliminary injunction hearing may be held; its provisional remedial nature is designed merely to prevent irreparable loss of rights prior to judgment." *Miller v. Rufion*, No. 08-1233, 2009 WL 348176, at *1 (E.D. Cal. Feb. 11, 2009) (citing *Sierra On-Line, Inc. v. Phoenix Software, Inc.*, 739 F.2d 1415, 1422 (9th Cir. 1984)). "Thus, in seeking a temporary restraining order, the movant must demonstrate that the denial of relief will expose him to some significant risk of irreparable injury." *Id.* (quoting *Associated Gen. Contractors of California v.*

1 *Coalition of Economic Equity*, 950 F.2d 1401, 1410 (9th Cir. 1991).¹

2 Plaintiff has filed the instant temporary restraining order because he alleges that his sleeping
3 arrangements are dangerous. He must sleep on a bed with no safety bars and is danger of falling off
4 the bed when he sleeps.

5 Plaintiff must establish real and immediate irreparable harm before this court may grant a
6 temporary restraining order. Plaintiff has not met that high burden. Based on the facts presented,
7 plaintiff's alleged injuries do not establish the requisite immediacy to warrant a temporary restraining
8 order. Temporary restraining orders are mechanism for the court to deal with real, immediate, and
9 serious risks and injuries. This motion simply does not rise to that level, and the court further finds
10 that there is not a high enough likelihood of success on the merits to grant a temporary restraining
11 order.

12 When considering penological interests, the court should first determine the reasonableness
13 of the regulation. *See Turner v. Safely*, 482 U.S. 78, 89-90 (1987). Because plaintiff filed the instant
14 motion seeking a temporary restraining order, the prison has not yet had the opportunity to justify
15 the challenged policies. (*See doc. # 12*). However, plaintiff also filed the exact same motion seeking
16 a permanent injunction. (*Doc. # 13*). The court finds it appropriate to permit the prison to respond
17 to these allegations via the normal briefing schedule of a permanent injunction.

18 Accordingly,

19 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that plaintiff's motion for a
20 temporary restraining order (*doc. # 12*) be, and the same hereby, is DENIED.

21 DATED July 17, 2013.

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24 **UNITED STATES DISTRICT JUDGE**

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27 ¹ The Supreme Court has stated that courts must consider the following factors in determining whether to issue
28 a temporary restraining order and preliminary injunction: (1) a likelihood of success on the merits; (2) likelihood of
irreparable injury if preliminary relief is not granted; (3) balance of hardships; and (4) advancement of the public interest.
Winter v. N.R.D.C., 129 S. Ct. 365, 374-76 (2008).